IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

CTF HOTEL HOLDINGS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 02-271-SLR
	)	
MARRIOTT INTERNATIONAL, INC., RENAISSANCE HOTEL OPERATING COMPANY and AVENDRA, LLC,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

At Wilmington this 22nd day of May, 2002, having heard oral argument on plaintiff's motion to enjoin arbitration and on defendants' motions to compel arbitration and to dismiss or stay;

IT IS ORDERED that, for the reasons that follow, plaintiff's motion to enjoin arbitration (D.I. 5) is granted, defendants' motion to compel arbitration (D.I. 21) is denied, and defendants' motion to dismiss or stay (D.I. 36) is granted in part and denied in part.

1. The court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367.

2. Defendants Marriott International Inc. ("Marriott") and Renaissance Hotel Operating Company ("RHOC") (collectively, "the Marriott defendants") manage 20 hotels (the "Hotels") owned or leased by plaintiff CTF Hotel Holdings, Inc. ("CTF") in the United States. The appointment of the Marriott defendants as

manager of the Hotels is governed by two agreements. The first agreement was executed by CTF and RHOC on August 5, 1993 (the "Master Agreement"). Under the Master Agreement, CTF appointed defendant RHOC to operate and manage the Hotels as CTF's agent. The Master Agreement grants the "Manager" of the Hotels an array of powers and responsibilities, including the procurement of goods and services utilized and/or consumed in connection with operation of the Hotels. In addition, the Master Agreement requires RHOC to maintain the accounts of the Hotels, to maintain the Hotels' books and records and to furnish promptly those books and records for audit and examination by CTF as owner of the Hotels. (D.I. 2, Ex. A) Aside from agreeing to the governing law, the Master Agreement has no dispute resolution provision; specifically, it contains no arbitration clause or other limit to the fora available for resolving disputes under the Master Agreement.

3. In 1997, defendant Marriott purchased all of the outstanding shares in RHOC's parent Renaissance Hotel Group N.V. ("RHG"), a Netherlands limited liability company. As a result of the acquisition, Marriott assumed all of RHOC's functions and has since directly exercised RHOC's rights as if they were its own.

4. In 1998, disputes arose between CTF and the Marriott defendants concerning the Marriott defendants' conduct as agent and manager under the Master Agreement. Accordingly,

CTF issued a default notice threatening to terminate the Master Agreement.

5. To forestall termination of the Master Agreement, the Marriott defendants and CTF agreed to certain amendments and/or supplements to the Master Agreement, as now memorialized in an agreement entered on April 23, 1999 (the "1999 Agreement"). The 1999 Agreement was signed by RHOC and CTF as the original parties to the Master Agreement, and by Marriott. Two other parties executed the 1999 Agreement, RHG and Hotel Property Investments (B.V.I.) Ltd. ("HPI"). HPI, a British Virgin Islands company, owns hotels throughout the United States and Europe. HPI and CTF share the same parent, but operate as separate companies. RHG and HPI are parties to a 1995 management agreement regarding the operation of HPI's hotels; that agreement contains an arbitration clause. (D.I. 23, Ex. 2 at 14)

6. In crafting the 1999 Agreement, the parties accommodated the different management agreements executed by the Marriott defendants and CTF, on the one hand, and by the Marriott defendants and HPI, on the other hand, through the following language:

> In the event of any dispute or difference arising out of or relating to this Agreement, **if such dispute or difference relates to or arises out of a Hotel owned or leased by CTF (or otherwise governed by the CTF Master Agreement), then such dispute or difference shall be subject to the dispute resolution**

> **provisions in the CTF Master Agreement;** and if such dispute or difference relates to or arises out of a Hotel owned or leased by HPI (or otherwise governed by the HPI Master Agreement), then such dispute or difference shall be subject to the dispute resolution mechanisms in the HPI Master Agreement. **Nothing herein is intended to require arbitration of any dispute under the CTF Master Agreement or to limit any right any party may have to proceed in federal or state court on any dispute under the CTF Master Agreement.**

(D.I. 2, Ex. B at 31) (emphasis added).

7. CTF and the Marriott defendants once again are embroiled in a dispute over defendants' obligations under the Master and 1999 Agreements. CTF served notice of default on Marriott on or about March 21, 2002. On April 8, 2002, Marriott, RHG, and RHOC commenced arbitration proceedings against both CTF and HPI. In its demand for arbitration, Marriott seeks negative declaratory relief based on the two bases for termination of which it had received a default notice, i.e., certain alleged kickbacks and obstruction of CTF's audit rights. (D.I. 22 at 5-6) On April 12, 2002, CTF filed its complaint and motion to enjoin the arbitration proceedings.

8. As is universally recognized, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute for which he has not agreed to submit." Sandvik AB v. Advent Int'l Corp., 220 F.3d 99, 105 (3d Cir. 2000) (citing AT&T Techs., Inc. v. Communications Workers of Am., 475

U.S. 643, 648 (1986)). In recognition of the strong preference for arbitration, however, a party contesting arbitration "must show (1) that the Agreements expressly exclude the disputes from arbitration or (2) the existence of 'strong and forceful' evidence of an intention to exclude them from arbitration." United Steelworkers v. Lukens Steel Co., 969 F.2d 1468, 1475 (3d Cir. 1992).

9. In support of their various motions, defendants argue that the language recited above from the 1999 Agreement is ambiguous and that the court should resolve the ambiguity consistent with the presumption favoring arbitrability.

10. The court rejects defendants' underlying premise that the dispute resolution language recited above from the 1999 Agreement is ambiguous. In the court's view, the language clearly provides that any dispute relating to CTF's Hotels can be resolved through litigation, consistent with the Master Agreement. By contrast, any dispute relating to HPI's hotels must be referred to arbitration, consistent with its management agreement. The fact that the dispute between CTF and the Marriott defendants, and the dispute between HPI and the Marriott defendants, involve many of the same facts and issues cannot

override the fact that the parties specifically and clearly agreed to resolve their disputes in different fora.[1]

11. The court is persuaded, however, that this litigation should be stayed pending resolution of the arbitration proceeding between HPI and the Marriott defendants, in order to promote some efficiencies of judicial administration and in light of the participation in this litigation of defendant Avendra (a non-party to the Master and 1999 Agreements). The court will reconsider this decision if it appears that the arbitration is not proceeding apace.

Sue L. Robinson
United States District Judge

[1]Recognizing that "arbitration is a creature of contract law," E.I. DuPont de Nemours and Co. v. Rhone Poulenc Fiber and Resin Intermediates, S.A.S., 269 F.3d 187, 195 (3d Cir. 2001), the court understands that an arbitration agreement may be enforced against a non-signatory under "traditional principles of contract and agency law," e.g., third party beneficiary, agency/principal, and equitable estoppel. Id. None of these principles have been shown to be applicable to the facts of record.